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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF UTAH, DEFENDANT

PROOF OF MAILING PAPERS

DISTRICT OF COLUMBIA, *ss:*

The undersigned, being first duly sworn, deposes and says: On March 28, 1928, at Washington, D. C., I deposited in the United States post office in sealed envelopes, one addressed "Hon. George H. Dern, Governor of the State of Utah, Salt Lake City, Utah," and the other "Hon. Harvey H. Cluff, Attorney General of the State of Utah, Salt Lake City, Utah," true copies of the papers entitled in this case styled "Bill of Complaint," "Notice," and "Motion for leave to file Bill of Complaint."

WM. J. HUGHES.

Sworn to before me this 28th day of March, 1928.

[SEAL.] W. MARVIN SMITH,

Notary Public, D. C.

My commission expires May 23, 1929.

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF UTAH, DEFENDANT

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Comes now the United States, by its Attorney General and its Solicitor General, and asks leave of the Court to file its bill of complaint against the State of Utah submitted herewith.

JOHN G. SARGENT,
Attorney General.

WILLIAM D. MITCHELL,
Solicitor General.

APRIL, 1928.

STATEMENT IN SUPPORT OF MOTION

The purpose of this suit is to quiet title in the United States to certain portions of the river beds of the Green, Colorado, and San Juan Rivers, within the State of Utah. The United States is a riparian owner, and its claim to the river beds is based on that. Whether it is the owner of the beds

of these streams depends on whether they are navigable, and that, in turn, presents a question as to what test of navigability is to be applied.

Indications of oil deposits have been found in certain parts of these rivers. The State asserts title to the river beds on the theory that the rivers are navigable. The question of the ownership of the river beds is one which should be determined.

WILLIAM D. MITCHELL,
Solicitor General.

APRIL, 1928.

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF.

v.

THE STATE OF UTAH, DEFENDANT.

NOTICE

To the Honorable GEORGE H. DERN, GOVERNOR OF THE STATE OF UTAH, and to the Honorable HARVEY H. CLUFF, ATTORNEY GENERAL OF THAT STATE:

You will please be advised that on Monday, April 9, 1928, the plaintiff will apply to the Court for leave to file its bill of complaint, a copy of which is attached.

JOHN G. SARGENT,
Attorney General.
WILLIAM D. MITCHELL,
Solicitor General.

MARCH, 1928.

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF UTAH, DEFENDANT

BILL OF COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, brings this suit against the State of Utah and alleges and shows as follows:

I

By the Guadalupe Hidalgo Treaty of February 2, 1848 (9 Stat. 922), the United States then acquired from the Republic of Mexico title to all the riparian lands and river beds hereinafter described within what are now the boundaries of the State of Utah.

II

The United States so became, ever since has been, and now is seized in fee of all those lands riparian to, and on both sides of, and also including all of the bed of that portion of what is now known as the

Colorado River from the junction of Castle Creek and the Colorado River near the town of Moab, Utah, to the Utah-Arizona boundary line; of all those lands riparian to, and on both sides of, and also including all of the bed of the San Juan River (a tributary of the Colorado River) from its junction with Chinle Creek in San Juan County, Utah, to its confluence with the Colorado River; and of all those lands riparian to, and on both sides of, and also including all of the bed of the Green River (a tributary of the Colorado River), from a point where the said river crosses the township line between Townships 23 and 24 South, Range 17 East, Salt Lake Base and Meridian, to its confluence with the Colorado River (except those parcels of riparian and river-bed lands located upon each of said rivers respectively, described in the schedule marked "Exhibit A," attached hereto and made a part hereof).

III

The riparian and river-bed lands above described for the most part have not been surveyed, and the accurate acreage thereof or the course of said rivers as they traverse said lands has not been set forth. Nevertheless the plaintiff alleges that each of said river beds, lying within the riparian lands described in Paragraph II hereof, is plainly traceable upon the ground by the water marks along each side thereof; that each of said river beds is an entire and continuous tract extending without interrup-

tion between the places hereinbefore designated, and is located within the State of Utah. A map showing the general course of the rivers within the State of Utah is attached hereto, made a part hereof, and marked "Exhibit B."

IV

(*a*) Prior to July 25, 1921, the Colorado River was regarded as commencing at the junction of the Green and Grand Rivers, Utah, and extending thence to the Gulf of California. By joint resolution of Congress of July 25, 1921 (c. 52, 42 Stat. 146), and by State enactments, the name of the Colorado River was applied to all of what was then known as the "Grand River" from its source in the State of Colorado to its junction with the Green River in Utah. The river now known as the "Colorado River" traverses from its headwater region in Colorado to its mouth in the Gulf of California a distance of approximately 1,600 miles, about 321 miles of which are in Utah.

(*b*) The Colorado River rises in the State of Colorado, enters Utah in Fractional Township 19 South, Range 26 East, Salt Lake Base and Meridian, flows southwesterly through Township 20 South, Range 25 East, Township 21 South, Ranges 24 and 25 East, and Township 22 South, Range 24 East, Salt Lake Base and Meridian, and continuing southwesterly passes from Utah into Arizona at what would be, if surveyed, approximately Frac-

tional Township 44 South, Range 5 East, Salt Lake Base and Meridian.

(*c*) The San Juan River rises in the high San Juan mountains of Colorado, flows southwestwardly into New Mexico; thence into Colorado; thence into Utah near the corner common of Colorado, New Mexico, Arizona, and Utah; thence west through San Juan Canyon, and empties into the Colorado River about fifty miles above the Utah-Arizona boundary line.

(*d*) The Green River rises in the State of Wyoming, enters the State of Utah in Fractional Township 3 North, Range 21 East, Salt Lake Base and Meridian, flows in a southeasterly direction a distance of approximately sixty miles, leaving the State of Utah in Township 1 North, Range 25 East, Salt Lake Base and Meridian, to enter the State of Colorado; returns again to the State of Utah in Township 3 South, Range 25 East, Salt Lake Base and Meridian, and flows in a southwesterly and southerly direction a distance of approximately 336 miles to its junction with the Colorado River, near the southeast corner of Wayne County, Utah.

(*e*) The Green River flows through Daggett, and Uintah Counties, Utah, and forms the boundary line between the Counties of Carbon and Uintah, Emery and Grand, and Wayne and San Juan, Utah. The Colorado River flows through Grand and San Juan Counties, Utah, and forms the boundary line between the Counties of Garfield and

San Juan, and Kane and San Juan, Utah. The San Juan River flows through San Juan County, Utah.

(*f*) With the exception of a few small and isolated areas, the region traversed by each of said streams throughout their courses in the State of Utah is now, and from time immemorial has been arid, barren, desolate, so broken and so high above the steep canyoned streams as generally to preclude access of man or beast to the streams, and to make the region uninhabited, and substantially uninhabitable. The region has not produced and does not produce commodities which would or could be transported by water; nor is it susceptible of sustaining a population to be served by water transportation.

(*g*) The Colorado, San Juan, and Green Rivers, throughout the reaches described in Paragraph II, immemorially have been and are tortuous, laden with great quantities of sand and silt, the flow is rapid and extremely variable in volume and depth, and the channels profusely beset with both fixed and shifting boulders producing rapids and cataracts. On the banks and in the beds of the said rivers sand beds and bars of gravel are formed which shift from time to time by reason of the erratic, swift flow of the rivers, the steep gradient thereof, and the action of floods.

(*h*) The San Juan River is heavily laden with matter in suspension and rolls or moves along by

the violence of its current a vast mass of sand, which is carried forward in series of sand waves varying in height with the depth and velocity of the current. Floods in San Juan Canyon, through which the stream flows, are numerous and disastrous. During such stages the river frequently changes the position of the main channel and erodes the banks of the stream.

V

(*a*) The Colorado, Green, and the San Juan Rivers throughout their entire lengths within the State of Utah, as plaintiff is informed and verily believes and so alleges the fact to be, are not now, and never have been, navigable in fact, or what are known as navigable waters within the meaning of the laws of the United States, and neither trade nor travel can move over those portions of said rivers within said State, in their natural and ordinary conditions, according to the customary modes of trade and travel over water; nor have they been used, nor are they susceptible of being used, in their natural and ordinary conditions, as permanent highways or channels for useful commerce within the said State, between States, or with any foreign state.

(*b*) The Green River enters the State of Utah from the State of Wyoming and passes from the State of Utah into the State of Colorado through open canyons, and returns to the State of Utah

from the State of Colorado through a deep, narrow, rock-walled, practically inaccessible mountain gorge just below a violent rapid.

(*c*) The Colorado River enters the State of Utah from the State of Colorado through an open canyon and passes from the State of Utah into the State of Arizona through a precipitous, almost vertical, rock-walled, practically inaccessible canyon.

(*d*) The Colorado and Green Rivers at the aforesaid State boundary lines, and the said San Juan River at the boundary line between the States of Utah and Colorado, from time immemorial have traversed arid, barren, broken, desolate, uninhabited, and substantially uninhabitable regions. The flow of said streams at the aforesaid places is extremely variable in volume and depth; the channels are tortuous, beset with rocks, and on the banks and in the beds of said rivers sand and gravel bars are formed which shift from time to time by reason of the erratic flow of the streams and the action of floods. Because of the conditions at the points where said rivers cross the boundaries between the State of Utah and contiguous States the use thereof for interstate commerce is impracticable, and no part of said rivers within the State of Utah has been or can be used as a highway of interstate commerce.

VI

Deposits of mineral, to wit, oil and gas, have been discovered within certain portions of the riparian lands and extending to and under the river beds described in Paragraph II hereof, and owned by the United States as aforesaid.

VII

(*a*) Heretofore the United States, as proprietary owner, by and through its Secretary of the Interior, and pursuant to the laws of the United States, executed and delivered numerous prospecting permits, which are still in full force and effect, covering the therein-described portions of the said riparian and river-bed lands described in Paragraph II hereof, under the terms of which the permittees therein named were granted the exclusive right and privilege of prospecting for petroleum, oil, and gas minerals in and under the riparian and river-bed lands embraced therein, together with the right to use and occupy so much of the surface thereof as might be determined to be necessary in connection therewith.

(*b*) Heretofore and pursuant to said permits the said permittees have entered upon, and now are in possession and engaged in drilling and development work at various points on the lands and river beds embraced therein for the purposes aforementioned, and have devoted and expended and are continuing to devote an expend a great deal of time and large sums of money in developing and

operating the said permitted lands. The sums of money so expended are to the plaintiff unknown.

VIII

The defendant, the State of Utah, claims some estate, right, title, or interest, adverse to the United States, in and to the river beds described in Paragraph II hereof. The defendant State publicly asserts that said Colorado, Green, and San Juan Rivers, within the State of Utah, always have been and are now navigable, and that title to the beds thereof vested in it when and because it was admitted into the Union, January 4, 1896, and that such title remains so vested. The claim and assertion of interest made by said defendant, as aforesaid, is a cloud upon the title of plaintiff to the river beds involved in this suit.

IX

The defendant, the State of Utah, as plaintiff verily believes, has no proprietary title or interest in or to the river beds located as aforesaid within the lands described in Paragraph II hereof, or any part thereof, and is wholly without power or authority to grant, convey, or confer by lease or otherwise any proprietary or other interest or title therein.

X

Heretofore the defendant, the State of Utah, by and through its Board of Land Commissioners, but without the consent or authority of the United

States, has executed and delivered numerous leases in favor of the therein-named lessees and covering the therein-described river-bed lands which are a part and parcel of the said river beds located as aforesaid and described in Paragraph II hereof, whereby the said defendant, pursuant to its own laws, purported to grant to each of the said lessees for various terms of years, the exclusive right and privilege of mining and operating for petroleum, oil, gas, naptha, asphaltum, and kindred substances in or under said river beds, together with the right to use and occupy so much of the surface thereof as might be required for all purposes reasonably incident thereto. Plaintiff is without further knowledge as to such leases.

XI

The plaintiff has no plain, speedy, and adequate remedy at law, and unless its title is quieted by this Court to the said river beds described in Paragraph II hereof, and located as aforesaid, and unless the defendant, the State of Utah, is prevented from asserting any adverse right, title, or interest therein, and from interfering with the possession, use, or enjoyment thereof, great and irreparable damage and injury will result to the plaintiff.

WHEREFORE the plaintiff, United States of America, prays:

(a) That the defendant, the State of Utah, be required to answer this Bill of Complaint and therein to specifically set forth the nature and extent of any

estate, right, title, or interest claimed by said defendant, the State of Utah, in and to the said river beds, and any minerals thereunder, located as aforesaid within the lands described in Paragraph II hereof, or any part thereof.

(*b*) That any and every claim of estate, right, title, or interest in or to said river beds, and all minerals thereunder, located as aforesaid within the lands described in Paragaph II hereof, or any part thereof, or in or to the possession, use, or enjoyment of said river beds, now or heretofore made or asserted by the said defendant, the State of Utah, be adjudged and decreed to be null and void, and that the title thereto of the said plaintiff, the United States of America, be quieted as against any and all claims of the said defendant, the State of Utah.

(*c*) That the full and exclusive fee-simple title in and to the said riparian and river-bed lands, and all minerals thereunder, located and described as aforesaid in Paragraph II hereof, and every part thereof, with the exceptions set forth in "Exhibit A" hereof, be adjudged and decreed to be vested in the plaintiff, the United States of America, and that the plaintiff, the United States of America, be adjudged and decreed to be entitled to the exclusive use, enjoyment, and possession of the said river beds and every part thereof.

(*d*) That the defendant, the State of Utah, be forever enjoined from asserting any estate, right, title, or interest in or to the said river beds, and all min-

erals thereunder, located as aforesaid within the lands described in Paragraph II hereof, or any part thereof, adverse to the plaintiff, the United States of America, and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof by the plaintiff, the United States of America.

(*e*) That the plaintiff, the United States of America, have such other and further relief as it may be entitled to in equity and good conscience.

JOHN G. SARGENT,
Attorney General.
WILLIAM D. MITCHELL,
Solicitor General.

EXHIBIT A

SCHEDULE OF LANDS ELIMINATED FROM THIS SUIT

The following-described riparian and river-bed lands within the State of Utah, together with all riparian rights appurtenant thereto, having heretofore been disposed of by the United States, are excepted from the riparian and river-bed lands located and described in Paragraph II of the Bill of Complaint:

On the Green River:

In Township 24 South, Range 16 East:

Section 36, Lot 1.

On the Colorado River:

In Township 25 South, Range 21 East:

Section 26, Lot 4;
" 27, Lots 1 and 2;
" 34, Lots 1 to 4, inclusive.

In Township 36 South, Range 13 East:

Pioneer Placer (M. E. No. 2489). Approximately Sections 19 and 20, beginning at corner No. 1 from whence U. S. L. M. P. 2 bears S. 16° 35′ W. 714.4 feet distant; thence N. 14° 49′ E. 2,180 feet to corner No. 2; thence N. 89° 30′ E. 1,170 feet to corner No. 3; thence S. 30° 24′ W. 2,450.5 feet to corner No. 4; thence S. 89° 30′ W. 487.3 feet to corner No. 1, the place of beginning.

Mitz Placer Survey No. 3447 (M. E. 2365). Approximately Sections 19 and 20. Corner No. 1 identical with U. S. L. M. No. 2; thence S. 0° 20′ W. 1,320 feet to corner No. 2; thence S. 89° 40′ E. 40 feet to corner No. 3; thence N. 18° 11′ E. 691.6 feet to corner No. 4; thence N. 0° 50′ E. 661.9 feet to corner No. 5; thence N. 89° 40′ W. 257.5 feet to corner No. 1, the place of beginning.

Bert S. Placer (M. E. 3306). Approximately Sections 19 and 20. Beginning at corner No. 1, from whence U. S. L. M. No. 2 bears S. 89° 40′ E. 1,320.9 feet distant; thence N. 20′ E. 660 feet to corner No. 2; thence N. 89° 40′ W. 890 feet to corner No. 3; thence S. 20′ W. 1,450.8 feet to corner No. 4; thence S. 50° 55′ E. 334.3 feet to corner No. 5; thence N. 20′ E. 1,000 feet to corner No. 6; thence S. 89° 40′ E. 630 feet to corner No. 1, the place of beginning.

Bill M. Placer (M. E. 3306). Beginning at corner No. 1, from whence U. S. L. M. No. 2 bears S. 89° 40′ E. 2,210.7 feet distant; thence N. 20′ E. 660 feet to corner No. 2; thence N. 89° 40′ W. 2,640 feet to corner No. 3; thence S. 20′ W. 328 feet to corner No. 4; thence No. 86° 17′ E. 657.7 feet to corner No. 5; thence S. 81° 38′ E. 641.2 feet to corner No. 6; thence S. 57° 01′ E. 535.2 feet to corner No. 7; thence S. 89° 40′ E. 898.5 feet to corner No. 1, the place of beginning.

William F. Placer (M. E. 3305). Approximately Sections 19 and 20. Beginning at corner No. 1, from whence U. S. L. M. No. 2 bears N. 20′ E. 1,340.3 feet distant;

thence N. 89° 40′ W. 1,457 feet to corner No. 2; thence S. 20′ W. 25 feet to corner No. 3; thence S. 58° 50′ E. 643 feet to corner No. 4; thence S. 60° 58′ E. 447.2 feet to corner No. 5; thence N. 42° 20′ E. 766 feet to corner No. 1, the place of beginning.

On the San Juan River:

In Township 42 South, Range 19 East:

Embracing portions of SW. ¼ Section 5, SE. ¼ Section 6, NE. ¼ Section 7, NW. ¼ Section 8; corner No. 1 of claim bears S. 65° 51′ E. 431.8 feet from corner common to Sections 5, 6, 7, 8, T. 42 S., R. 19 E.; thence E. 2,196.6 feet to corner No. 2; thence N. 36° E. 215.3 feet to corner No. 3; thence N. 50° 13′ E. 412.2 feet to corner No. 4; thence N. 2,202 feet to corner No. 5; thence W. 2,640 feet to corner No. 6; thence S. 2,640 feet to corner No. 1, the place of beginning, M. E. 033108.

Crossing No. 2 Placer in SE. ¼ Section 7, corner No. 1 of claim bears S. 7° 58′ E. 2,844 feet from corner common to Sections 5, 6, 7, and 8, T. 42 S., R. 19 E., thence W. 2,189 feet to corner No. 2; thence S. 739.5 feet to corner No. 3; thence S. 52° 45′ E. 580.8 feet; thence S. 63° E. 402.6 feet; thence S. 76° E. 904.2 feet; thence N. 58° E. 504.9 feet to corner No. 4; thence N. 1,387.6 feet to corner No. 1, the place of beginning, M. E. 033173.

Monticello Placer, in NE. ¼ Section 7, NW. ¼ Section 8, corner No. 1 of claim bears S. 65° 51′ E. 431.8 feet from corner common

to Sections 5, 6, 7, 8, T. 42 S., R. 19 E.; thence S. 2,640 feet to corner No. 2; thence W. 927.8 feet to corner No. 3; thence N. 14° 45′ E. 162 feet; thence N. 23° 31′ E. 2,158.7 feet; thence N. 36° E. 622.9 feet to corner No. 4; thence W. 2,196.6 feet to corner No. 1, the place of beginning, M. E. 033173.


A



FOLD-OUT IS TOO LARGE TO BE FILMED